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C O N F I D E N T I A L SECTION 01 OF 04 JAKARTA 003262

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SECDEF FOR USDP/ISA/AP P.IPSEN

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SUBJECT: U.S. NAVAL MEDICAL RESEARCH UNIT -- INDONESIA
PRESENTS NEW MOU TEXT

REF: A. JAKARTA 0122
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Classified By: Pol/C Joseph Legend Novak, reasons 1.4(b-d).

11. (U) This is an Action Request -- please see para 14-15.

12. (C) SUMMARY: Indonesia has provided for U.S. comment a new proposed text of the draft Memorandum of Understanding (MOU) for the U.S. Naval Medical Research Unit in Jakarta (NAMRU-2). On balance, the text provides a constructive basis for further negotiations. The new text preserves unacceptable GOI positions on status of personnel but adopts U.S. recommendations regarding supervisory authorities and intellectual property rights (IPR). A cluster of controversial sample-sharing issues need scrutiny. Mission recommends another round of negotiations focused on all issues except the two hardest ones; i.e., status and sample sharing. Mission is providing the GOI's draft, annotated text to selected USG offices. END SUMMARY.

INDONESIA READY FOR FURTHER NEGOTIATIONS

13. (C) Indonesia has completed its interagency review of the draft joint text agreed in January, 2007 after the first round of technical negotiations. That text contained ad-referendum agreed language and bracketed language that was still contested. Not surprisingly, Indonesia has tended to reaffirm Indonesia-proposed language and rejected U.S.-proposed language. At the same time, however, Indonesia has accepted three significant U.S. proposals. On balance, the new text represents a step forward and a sign of Indonesia's desire to reach a workable agreement, and provides--we believe--a constructive basis for a further round of negotiations.

14. (SBU) Background on NAMRU-2: NAMRU-2 is one of three U.S. Navy overseas laboratories worldwide. NAMRU conducts medical research on tropical diseases of interest to the U.S. government in collaboration with host-country scientists. NAMRU-2 has been operating in Indonesia since 1970 and currently employs 18 U.S. citizens and 145 Indonesian staff. In 2000, the Indonesian government allowed the 1970 MOU to lapse but has permitted the unit to remain in operation on the basis of the MOU pending negotiation of a new one.

Initial senior-level negotiations were held in November 2006 and a first round of technical negotiations followed in January 2007 (reftels).

SOME PROGRESS

15. (SBU) Indonesia has adopted U.S. language in several areas by:

-- Dropping the Ministry of Defense (MOD) as a joint Executing Authority for the Indonesian side, leaving only the National Institute of Health Research and Development in the Ministry of Health (MOH);

-- Adopting in its entirety U.S.-proposed language on intellectual property rights (IPR), drawn verbatim from a U.S.-Indonesia tsunami early-warning agreement signed in 2006 and currently in force, now as an Annex to the agreement; and,

-- Noting in the preamble the past thirty years of cooperation between NAMRU-2 and Indonesia.

16. (C) Mission Comment: The IPR language was not really in dispute, as Indonesia did not present an alternative text, and the agreed text reiterates provisions from a recent U.S.-Indonesia agreement. The elimination of the MOD, however, is an important concession. In the last round of negotiations, the Indonesian side insisted on including the MOD along with the MOH as responsible authorities. In our view, MOD lacks the necessary medical expertise and has up to now had no role in the management of NAMRU-2. Any MOD involvement in the management of NAMRU-2 would have presented problems. This concession is a modest sign that Indonesia

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recognizes the importance of preserving NAMRU-2's operational effectiveness.

NO PROGRESS ON STATUS

17. (C) Indonesian and U.S. views remain fundamentally apart on the legal status of personnel and related issues. Indonesia has:

-- Retained, with numerous revisions, language on the legal status of personnel which would grant Administrative and Technical (A&T) status only to the Commanding Officer and the Executive Officer and their dependents, leaving all other U.S. personnel with no special status; and,

-- Sharpened Indonesia-proposed language stating that tax, duty and other exemptions will be granted in accordance with the prevailing laws and regulations of Indonesia (thus linking these privileges directly to status).

18. (C) Mission Recommendation: We must press for A&T status for all U.S. NAMRU-2 personnel and their dependents. This issue, however, is perhaps the most difficult of all. Recognizing that, Indonesian Presidential Adviser Dino Djalal, a strong supporter of NAMRU-2, stated in the initial senior-level round of negotiations that this issue might need to be resolved by President Yudhoyono at the conclusion of formal negotiations between the two sides (ref b).

PROBLEMATICS ISSUES

19. (C) On several issues, Indonesia has retained Indonesia-only language which we would prefer to exclude from the agreement but which does not appear to be a deal breaker and therefore should be negotiable. Such language includes:

-- Retaining unnecessary reference in the preamble to a) the Biological Weapons Convention (BWC) and b) the U.S.-Indonesia Agreement on Cooperation in Scientific Research and Technological Development, signed in 1972 and renewed on 1997 but allowed to expire in 2002;

-- Expanding the functions of the Joint Research Coordinating Committee to include "inspection" and "auditing" of research progress;

-- Retaining an Indonesia-only provision granting GOI authorities "complete jurisdictions" with regard to NAMRU-2 premises and properties; and,

-- Limiting the duration of the agreement and subsequent renewal to five years each, in lieu of the U.S. proposal for an initial duration of ten years and automatic continuation in force thereafter until terminated by either party.

¶10. (C) Mission Recommendation: The USG needs to determine whether the provision for inspection and auditing, taken in context, would grant Indonesia the legal right to audit personnel and financial records, which are currently off-limits. If these terms, as used in the MOU, do not pose serious practical problems for NAMRU-2, we recommend accepting them as part of the political ballast necessary to gain Indonesian public support.

SAMPLE SHARING

¶11. (SBU) On several issues, Indonesia has reaffirmed controversial language relating to the handling of biological specimens. These issues are central to other ongoing negotiations, notably with the World Health Organization, (WHO) concerning the handling of samples of avian influenza and other pathogens. This language includes:

-- Reference to the Preamble, the Convention on Biological Diversity (1992) as reaffirming States' "sovereign rights over their own biological resources," a convention which the United States has signed but is not a state party to;

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-- Indonesia's right to take necessary measures and exercise its jurisdiction over "misuse" of specimens and related materials; and,

-- A reference to a Material Transfer Agreement (MTA) contract in the handling of specimens.

¶12. (SBU) Indonesia also has retained the term "genetic resources," in lieu of the U.S.-proposed term "genetic material," in regard to the handling of specimens. The Indonesian term appears to be tied to the Convention on Biological Diversity, but it appears to be less problematic than the other provisions in this area and may ultimately be a term we could accept.

¶13. (C) Mission Comment: Ultimately the terms of NAMRU-2's collaboration in this area will depend on the outcome of these other negotiations. A final USG position on these MOU issues should be deferred until those other negotiations are completed, or these provisions should be replaced by a general reference to external documents. Rather than hold the NAMRU-2 MOU hostage to these negotiations, and perhaps in any case because of the evolving nature of this area, we should consider replacing most or all of the language relating to sample sharing with a provision stating essentially that "NAMRU-2 agrees to follow all Indonesian laws and regulations regarding the export and import of biological specimens." Such a statement would be factually accurate, irrespective of the outcome of any sample-sharing negotiations under way now.

NEUTRAL CHANGES

¶14. (SBU) Some changes would appear to be acceptable, pending Washington's confirmation. These include:

-- Adding tuberculosis to the specified researched diseases;

-- Reaffirming references to "re-emerging" diseases as a subject of research;

-- Retaining a reference to the training of Indonesians (preamble only, no specifics provided);

-- Reaffirming "transfer of technology" and "exchange of technology" (preamble and under forms of cooperation and contributions); and,

-- Adding "symposia, workshops and conferences" to forms of cooperation.

¶15. (C) Mission Comment: Training and transfer of technology are marginal to NAMRU-2's contribution. That said, some training and transfer of technology does occur. Inclusion of such terminology, in the proper context, should therefore be possible.

ACTION REQUEST

¶16. (C) Mission requests Washington agencies' review and comments as soon as possible, with a view to scheduling the next round of technical negotiations in January 2008. Mission is forwarding by unclassified email an annotated version of the draft Indonesian text for interagency review and comment. In the foregoing discussion, we have divided the issues into categories, as we see them, with an eye to developing a forward-oriented strategy for the next round of technical negotiations. We request Washington's comments with an eye to which issues remain hard lines and which ones allow some flexibility, in the interest of achieving some compromises in the round ahead.

¶17. (C) This agreement will be a public document which most likely will need to be ratified by the Indonesian legislature (DPR) and will in any case receive critical DPR scrutiny. The DPR has recently challenged the Yudhoyono Administration regarding perceived failures to preserve Indonesian national interest in international agreements. The debate over

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Indonesia's support of UNSCR 1747 on Iran and the DPR's continued rejection of a Defense Cooperation Agreement with Singapore are two recent examples. Some of the Indonesian language in the draft NAMRU-2 agreement may be aimed primarily at pre-empting such criticisms rather than fundamentally altering the professional collaboration at NAMRU-2 or creating a pretext for suspending cooperation. Indonesia continues to work with NAMRU-2 now, despite its ability to close NAMRU-2 at any time. Mission therefore requests Washington's careful consideration whether some provisions, even if not entirely to our liking, could be accepted to help secure public support for the agreement.

HUME